

REMARKS/ARGUMENTS

The present amendment is in response to the Office Action dated October 9, 2007 finally rejecting claims 1-11. Also enclosed with this response and amendment is a Request for Continued Examination (RCE) which Applicant respectfully submits.

Applicant has amended the independent claims 1 and 6 to include a more thorough description of the mechanisms of the instrument of the present invention. These amendments are made to clarify the invention, and further advance prosecution. No new matter was added with these amendments. Applicant respectfully submits that the claims are now in a condition for immediate allowance over the prior art.

In the Office Action, Examiner rejected claims 1-9 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,122,130 (Keller). Keller discloses an intervertebral implant holding instrument.

Contrary to Examiner's assertions, Applicant respectfully submits that Keller does not disclose each and every element of the claimed invention as required by 35 U.S.C. §102(b).

Keller discloses an implant holding instrument 23 including a U-shaped holding element with legs 24 and 25. A screw 26, located at the proximal end of the instrument 23, may be turned which creates a tensile force on legs 24 and 25. By turning the screw 26, the outer tube 28 presses against both legs 24 and 25 so that both legs 24 and 25 are pressed inwardly together to hold the implant securely. Keller, col. 5, ll. 61 to col. 6, ll. 5.

Contrary to Examiner's assertions, it is respectfully submitted that Keller does not teach each and every element of the present invention. Specifically, Keller does not teach a

"first pincer which is fixed at the distal end of the shaft." Keller teaches that both legs 24 and 25 move to securely hold the implant. In the present invention, only one of the pincers moves to securely hold the implant. The first pincer remains in a fixed position whether the instrument is in the open position or in the closed position, holding the implant.

Moreover, Keller does not include a second pincer which can "rotat[e] into and out of spacer holding association with said first pincer." In Keller, the arms 24 and 25 are pressed inwardly together to securely hold the implant. As can be seen in FIG. 9, legs 24 and 25 are "pressed together to hold the sliding core 4." Keller, col. 6, ll. 4-5. Essentially, legs 24 and 25 are resilient, and thus can deform inwardly when screw 26 is turned to move into a position where they can press together and hold the "sliding core 4," or implant. In the present invention, however, the second pincer pivots from an open position to a closed position. When in the closed position, the implant is securely held between the first and second pincer. However, when the second pincer is rotated outwards, the implant may be released from the instrument. Application, ¶[0108].

For these reasons, it is respectfully submitted that Keller does not teach each and every element of the present application. As such, Applicant kindly requests that this rejection be lifted and the pending claims allowed over the cited art.

Also in the Office Action, Examiner rejected claims 1 and 6-11 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 640,308 (Koch). Koch discloses a machinery wrench.

Contrary to Examiner's assertions, Applicant respectfully submits that Koch does not disclose each and every element of the claimed invention as required by 35 U.S.C. §102(b).

Koch discloses a wrench including two opposing jaws B and C. The wrench may have one jaw that is fixed and one that is movable, using a screw-actuated "setting-rod" g and pin e. The pin moves within a slot in jaw C, which is adjusted by turning the screw I,i.

Contrary to the Examiner's assertions, it is respectfully submitted that Koch does not teach each and every element of the present invention. Specifically, Koch does not disclose a second pincer that is "biased towards one of a spacer holding association position or out of a spacer holding association position." Koch does not disclose a biasing of a movable pincer, or jaw C.

As claimed, the present invention, on the other hand, has a second pincer which is biased in either an open or closed position. For example, the instrument may have a spring 818 which biases the second pincer in a specified position. A biasing element in the present invention greatly contributes to its usefulness, particularly when attempting to release the implant. Koch does not include a biasing element, and thus does not have each and every element of the claimed invention.

Moreover, Koch does not teach "opposing inner curved surfaces that extend to a distal-most end of said instrument." The jaws B and C of Koch include a flat portion which extends beyond the inner curved surface portion. Thus, the inner curved portions are not at the distal-most end of the instrument. If a tool similar to Koch was used in a surgery, Applicant is of the opinion that the extraneous flat portion on the distal end of the tool would interfere with various areas of the body. This is particularly true in intervertebral surgery where there are numerous muscles, tissues and nerves to navigate through. Koch does not provide the benefits of the present application, in that the instrument of the present application includes the inner curved implant pincers on the distal-most portion of the

instrument.

For these reasons, it is respectfully submitted that Koch does not teach each and every element of the present application. As such, Applicant kindly requests that this rejection be lifted and the pending claims allowed over the cited art.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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